IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NOS. 253 AND 237 OF 1999

CIVIL REVISION APPLICATION NO. 253 OF 1999

1. Shri Narcinva S. V. Sinai
   Velingkar, resident of
   Aquem, Margao, Goa.

2. Shri Ramakant V. S.
   Velingkar, resident of
   Aquem, Margao, Goa.

3. Shri Achut V. S. Velingkar,
   resident of Aquem, Margao,
   Goa.

4. Smt. Gomatibai Velingkar,
   resident of Aquem, Margao,
   Goa(since deceased) through
   legal representatives:

4a. Mr. Jayant Venctexa Poi
   Bhale, major of age,
   businessman and his wife,

4b. Mrs.Kishori Jaiant Poi,
   Bhale, both residents of
   E2, Adarsh Coop. Society,
   Caranzalem, Ilhas,
   Goa – 403 002.

4c. Dr. Gurudas Poi Bhale,
   alias Gurudas Venctesh
   Poi Bhale, Medical
   Practitioner and his wife,

4d. Alka Gurudas Poi Bhale,
   both residents at Shubham,
   Faliero Bagh, Mungul Grand,
   Margao, Goa. Pin.403 801.

4e. Dr. Satischandra Venktexa
   Poi Bolo, alias Satischandra
   Venctesh Poi Bhale,
   Medical Practitioner and
   his wife,

4f. Mrs. Sulaksha Satischandra
   Poi Bhale, both residents at
   Amar Pali, Block No.25,
   3rd floor, Atmaram Borkar Road,
   Panaji, Goa – 403 001.

4g. Miss Sandya Venctexa Poi
Bhale, daughter of the late
Venctexa Poi Bhale, housewife,
unmarried, resident of E2,
Adarsh Cooperative Society,
Caranzalem, Goa - 403 002. ... Applicants.

versus

1. The Land Acquisition Officer,
Dy. Collector, Collectorate
Office, South Goa, Margao.

2. Government of Goa,
through Secretary,
Tourism of Goa, Patto,
Panaji, Goa. ... Respondents.

Mr. M. S. Usgaonkar, Senior Advocate with Miss R. Sardessai, Advocate for the Applicants.

Mr. V. P. Thali, Additional Advocate General with Miss S. Linhares, Additional Government Advocate for the Respondents.

CIVIL REVISION APPLICATION NO. 237 OF 1999

1. The Land Acquisition Officer,
Dy. Collector, Collectorate
Office, South Goa, Margao.

2. Government of Goa, through
Secretary Tourism, having
Office at Secretariat,
Panaji, Goa.

3. The Director of Tourism,
Directorate of Tourism,
Government of Goa,
Patto, Panaji, Goa. ... Applicants.

versus

1. Shri Narcinva S. V. Sinai
Velingkar, resident of
Aquem, Margao, Goa.

2. Shri Ramakant V. S.
Velingkar, resident of
Aquem, Margao, Goa.

3. Shri Atchut V. S.
Velingkar, resident of
Aquem, Margao, Goa.

4. Smt. Gomatibai Velingkar,
resident of Aquem,
Margao, Goa(since deceased)
through legal representatives:

4a. Mr. Jayant Venctexa Poi
Bhale, major of age,
businessman and his wife,

4b. Mrs. Kishori Jaiant Poi
Bhale, both residents of
E2, Adarsh Coop. Society,
Caranzalem, Ilhas, Goa-403 002.

4c. Dr. Gurudas Poi Bhale, alias
Gurudas Venctesh Poi Bhale,
Medical Practitioner and
his wife,

4d. Alka Gurudas Poi Bhale,
both residents at Shubham,
Faliero Bagh, Mungul Grand,
Margao, Goa. Pin.403 801.

4e. Dr. Satischandra Venktexa
Poi Bolo, alias Satischandra
Venctesh Poi Bhale,
Medical Practitioner and
his wife,

4f. Mrs. Sulaksha Satischandra
Poi Bhale, both residents at
Amar Pali, Block No.25,
3rd Floor, Atmaram Borkar Road,
Panaji, Goa - 403 001.

4g. Miss Sandya Venctexa Poi Bhale,
daughter of the late
Venxtexa Poi Bhale, housewife,
unmarried, resident at E2,
Adarsh Cooperative Society,
Caranzalem, Goa - 403 002. ... Respondents.

Mr. V. P. Thali, Additional Advocate General with Miss S. Linhares, Additional Government Advocate for the Applicants.

Mr. M.S. Usgaonkar, Senior Advocate with Miss R. Sardessai, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.
DATE OF RESERVING
THE JUDGMENT :3RD OCTOBER,2002.
DATE OF PRONOUNCING
THE JUDGMENT :1ST NOVEMBER,2002.

J U D G M E N T

Both these revisions arise against a common Order, dated 31st July, 1999, passed by the learned District & Sessions Judge, South Goa, Margao, in Execution Application No.14 of 1997. Since both the revisions are filed challenging a common Order, both the revisions are decided by this common Judgment.

2. An application for execution of an Award dated 28th November, 1998 in Land Execution Case No.284/81, passed by the learned District & Sessions Judge, South Goa, Margao, came to be filed by the Applicants in Civil Revision Application No.253/1999 and Respondents in Civil Revision Application No.237/1999. Civil Revision Application No.237/1999 is taken up for consideration first and, therefore, the Decree Holders, who are the Respondents in the said application are referred to as the Respondents and the Judgment Debtor, who is the Applicant in this revision is referred to as the Applicant.

3. As stated above, the execution was filed by the Respondents in Civil Revision Application No.237/1999 claiming a total sum of Rs.24,72,554.86 as per the calculation which was set up by them in the application.

The aforesaid application was objected to by the Judgment Debtor, who is the Applicant in Civil Revision Application No.237/1999. The objections were that an Appeal had been filed in the High Court challenging the Award passed by the learned District & Sessions Judge, South Goa, Margao. The aforesaid Appeal viz. First Appeal No. 116/1989 was disposed of on 29th February, 1996 and a sum of Rs.33,93,253.95 had been deposited by the present Applicants in the High Court. It was further objected to that as per the Order of the High Court, the Respondents/Decree Holders were permitted to withdraw an amount of Rs.30,54,815.61 together with the interest and the present Applicants/Judgment Debtors were permitted to withdraw an amount of Rs.3,38,438.34 together with the proportionate interest. The Applicants/Judgment Debtors had submitted their own statement of calculation challenging the amount as claimed by the Respondents herein/Decree Holders.

4. A rejoinder was filed by the present Respondents/Decree Holders on 9th December, 1997 contending therein that the calculation of the present Applicants/Judgment Debtors was not correct as the possession of the land was taken on 19th October, 1979 and not on 23rd September, 1981 as has been shown by the Judgment Debtors. The Respondents/Decree Holders then

filed a revised statement of claim claiming an amount of Rs.32,85,750.49.

5. The learned District & Sessions Judge, South Goa, Margao, while deciding the question as to when the possession of the land and the structures was taken, by his Order held that the possession of the land was taken on 19th October, 1979 and vacant possession of the structures situated over the land was taken on 23rd September, 1981. It is this part of the Order that is assailed in Civil Revision Application No.237/1999 filed by the Land Acquisition Officer who was the Judgment Debtor in the aforesaid execution. It would be useful to make a reference to the various documents which were placed for the perusal of the learned District & Sessions Judge, South Goa, Margao and on the basis of which the learned Trial Court has recorded its findings. The first document is a notice issued under Section 12(2) of the Land Execution Act by the Government to the present Respondents/Decree Holders. The said notice gives an intimation to the present Respondents that the possession of the land would be taken on 19th October, 1979 under Section 16 of the Land Acquisition Act. The second document is a letter dated 20th November, 1979 addressed by the Deputy Collector, Margao to the Director of Information and Tourism stating therein that the possession certificate in triplicate was being sent for necessary action. The letter further

requested the Director of Information and Tourism to return the said certificate after signing the same in token of having taken over the possession of the land. The third document is a letter dated 24th September, 1981 in respect of taking of possession on 23rd September, 1981. The fourth document is a report of the Government Valuer, who was examined as a witness in Land Acquisition Case No.284/81 and at page 127 of the report, the date of possession is stated to be 19th October, 1979.

6. The learned Trial Court after hearing the parties and on perusal of the material placed by the parties came to a conclusion that the Non Applicants/Decree Holders had proved that the possession of the land was taken over on 19th October, 1979 and vacant possession of the structures situated over the land was taken over on 23rd September, 1981. This finding is assailed in the present revision.

7. During the hearing of the revision, Mr. V. P. Thali, the learned Additional Advocate General appearing for the Applicants/Judgment Debtors, sought production of certain documents, which according to him, would conclusively establish the findings of the learned Trial Court to be erroneous.

8. Mr. M. S. Usgaonkar, the learned Senior Advocate appearing for the Respondents/Decree Holders has

also sought production of certain documents, which according to him would further butterus the finding of the learned Trial Court in respect of the date of possession. I have perused the documents produced by the respective parties. According to me, the documents sought to be produced are material documents, the appreciation of which may affect the finding of the learned Trial Court or may fortify the findings of the learned Trial Court. The learned Trial Court while recording the finding which is referred to above did not have the benefit of perusal and appreciating the documents which are sought to be produced by the learned Advocates for the parties in this revision before me. Therefore, according to me, this would be a fit case to be remitted back to the learned Trial Court, giving an opportunity to the parties to produce documents relevant to the determination of the question of the date of taking possession.

9. Civil Revision Application No.237/1999 is thus allowed. The part of the Order of the learned Trial Court in respect of the date of possession is quashed and set aside and the matter is remitted back to the learned Trial Court to decide afresh the question of date of taking possession, permitting the parties to produce such documents on which they propose to rely. It is needless to mention that the learned Trial Court will decide the

question of the date of possession as expeditiously as possible.

10. Civil Revision Application No.253/1999 is filed by the Applicants/Decree Holders. The learned District & Sessions Judge, South Goa, Margao, in his Judgment while dealing with the submissions which were advanced on behalf of the Decree Holders in respect of solatium has in para 13 held that the Decree Holders were not entitled to claim interest on solatium. Both the learned Counsel for the parties have fairly stated that this point is no longer res integra as it stands concluded by the Hon'ble Apex Court in **Sunder** v. **Union of India** reported in 2001(7) Supreme 37 wherein the Hon'ble Apex Court in para 6 of the Judgment has held that interest on solatium is payable. Thus, this part of the Order by which the learned District & Sessions Judge has declined to grant interest on solatium to the Decree Holders is unsustainable.

11. It would be useful to make a reference to certain dates in order to appreciate the submissions of Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the Applicants in this revision. This Court by its Order dated 25th September, 1989, on an appeal filed by the State, challenging the award of the Reference Court, had granted stay to the execution on the condition that the State deposits the decretal amount in this Court within eight

weeks from the date of the Order. By the same Order, the Special Officer was directed to invest the amount in a Nationalised Bank initially for a period of one year and thereafter as per the directions of the Court. The First Appeal No.111/1989 filed by the State was ultimately heard and decided by a Judgment of the Division Bench dated 29th February, 1996. The Division Bench in its Judgment in para 7 has modified the award to the extent by deducting the benefit granted by the Reference Court under Section 23(1-A). Thus, the Appeals were partly allowed and the Judgment appealed against stood modified to that extent. It may be stated that when the interim stay to the execution of the award of the Reference Court was granted, the present Applicants were represented before the Court by a Counsel. Thus, the Order of stay was passed in the presence of the Applicants. After the decision of the Division Bench of this Court in the two First Appeals No.111 and 116 of 1989, the Decree Holders by Order dated 1st August, 1997, passed in Civil Miscellaneous Application No.332/97, were permitted to withdraw an amount of Rs.30,54,815-61 with proportionate interest. The learned District & Sessions Judge, South Goa, Margao, in para 14 of his Order has held that the decision of the Hon'ble Apex Court in **Prem Nath Kapur and another** v. **National Fertilizers Corporation of India and others** reported in (1996) 2 SCC 71 has held that by operation of Section 53 of the Land Acquisition Act,1894, Order 21 Rule 1 being

inconsistent with the express provisions contained in Sections 34 and 28 of the Act stands excluded. The learned District & Sessions Judge, South Goa, Margao, relying on the aforesaid Judgment of the Hon'ble Apex Court in the aforesaid Prem Nath Kapur's case has held that the ratio in **Meghraj and others** v. **Ms.Bayabai and others** reported in AIR 1970 SC 161 is inapplicable to the ratio of debt under the Land Acquisition Act, 1894. The Hon'ble Apex Court in Prem Nath Kapur's case further held that the ratio in **Megraj and others** v. **Ms. Bayabai and others**(supra) was applicable only to a debtor and creditor in an ordinary civil suit governed by the provisions of C.P.C. The learned District & Sessions Judge, South Goa, Margao in the same para has held that the State had deposited the decretal amount and the Decree Holders were permitted to withdraw Rs.30,54,815-61 with proportionate interest on offering security but this aspect of the security was not very clear from the records.

12. Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the Applicants has pointed out that this premise of the learned District & Sessions Judge, South Goa, Margao is incorrect as the Applicants/Decree Holders had withdrawn the said amount after the decision of the Appeal. The learned District & Sessions Judge, South Goa, Margao further held in the same para that the Decree Holders cannot be allowed to have double benefit i.e.

interest accrued on the sum deposited as also interest claimed under the Land Acquisition Act, 1894 as the deposit was made in the presence of the Decree Holders and since the Decree Holders had withdrawn the amount, therefore, that deposit should be taken as deposit under Section 34 of the Land Acquisition Act, 1894. The point urged before me is whether the deposit made in the High Court can be taken as a deposit under Section 34 or 38 of the Land Acquisition Act, 1894.

13. Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the Applicants has urged before me that the present case, being of deposit made pending the decision of an Appeal in order to obtain stay of execution, is governed only by Order 21 Rule 5 and not by the provisions of the Land Acquisition Act, 1894. In this regard, the learned Senior Counsel appearing for the Applicants has invited my attention to a Judgment of the Madras High Court in **Periakaruppan Chettiar** v. **Veerappa Chettiar** reported in AIR 1944 Madras 46. Reliance is placed on the following observation in the report which is reproduced hereunder:-

> "There is no general rule that where a judgment-debtor obtains stay of execution on depositing a certain amount in Court as security and the decree-holder is given permission to draw it out only on furnishing security, interest should cease to run on the amount deposited into Court

> by reason of its deposit from the date of deposit. Whether interest runs or ceases to run is a matter for a special order on the special facts. An order directing interest to cease from the date of deposit will be made only under exceptional circumstances".

14. Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the Applicants has also urged before me that the ratio in **Prem Nath Kapur and another** v. **National Fertilizers Corporation of India and others**(supra) can be distinguished and the ratio therein does not apply to the facts of the present case. According to the learned Senior Counsel appearing for the Applicants, the ratio of the Judgment of the Hon'ble Apex Court in **Meghraj and others** v. **Bayabai and others**(supra) would be applicable to the facts of the present case.

15. The Hon'ble Apex Court in **Meghraj and others** v. **Bayabai and others**(supra) has held in para 6 as under:-

> "Counsel for the appellant contended that in Venkatadri Appa Row's case, 48 Ind App 150 = (AIR 1922 PC 233) there was no specific appropriation by the debtor, whereas in the present case there is specific direction by the debtor. But the normal rule is that in the case of a debt due with interest any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the principal".

16. Reliance is also placed by Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the Applicants on a decision of the Hon'ble Apex Court in **Mathunni Mathai** v. **Hindustan Organic Chemicals Ltd. and others** reported in (1995) 4 SCC 26 and particularly on the observations of the Hon'ble Apex Court at para 3 of the report which reads thus:-

> "The right of the decree-holder to appropriate the amount deposited by the judgment-debtor, either in court or paid outside, towards interest and other expenses is founded both on fairness and necessity. The courts and the law have not looked upon favourably where the judgment-debtor does not pay or deposit the decretal amount within the time granted as one cannot be permitted to take advantage of his own default. Therefore, the normal rule that is followed is to allow the deposit or payment if it is in part to be adjusted towards the interest due etc.".

17. Both the Judgments of the Hon'ble Apex Court in **Meghraj and others** v. **Bayabai and others**(supra) and **Mathunni Nathai** v. **Hindustan Organic Chemicals Ltd. and others**(supra) fell for consideration in **Prem Nath Kapur and another** v. **National Fertilizers Corporation of India Ltd. and others**(supra). The Hon'ble Apex Court in **Prem Nath Kapur and another** v. **National Fertilizers Corporation of India Ltd. and others**(supra) in para 3 has reproduced the arguments which were advanced by placing reliance on

Mathunni Mathai v. **Hindustan Organic Chemicals Ltd. and others**(supra) which reads thus:-

> "Shri Pankaj Kalra, learned counsel for the appellants contended that the present controversy having been concluded by a recent judgment of this Court in **Nathunni Mathai** v. **Hindustan Organic Chemicals Ltd.** is no longer res integra. He further contended that the appellants are entitled to appropriate the costs from the principal amount of compensation, then towards interest on total amount of compensation from the date of taking possession till date of payment as determined by the Collector as well as the High Court. The hierarchy of courts would determine the compensation after considerable delay and the owner or interested person is entitled to be compensated for loss in value of their land. On determination thereof, the State as judgment-debtor is liable to restitute the owner with just compensation by way of principal amount and interest accrued thereon. The owner of the land as judgment-creditor is entitled to appropriate the principal amount deposited by the Collector, in the first instance, towards costs, then towards interest on total amount and the balance amount and interest accrued thereon is entitled to be recovered in execution. Therefore, the High Court was not right in holding that the appellants were entitled to the interest only from the respective dates of the award of the Collector or the orders of the court. The direction not to appropriate the amount deposited by the Collector first towards costs and then interest is clearly illegal. In support

> thereof, Shri Kalra placed strong reliance on the judgment of this Court in Meghraj v. Bayabai".

18. The Hon'ble Apex Court in para 13 after considering the provisions of the Land Acquisition Act, 1894 has held as under:-

> "Thus we hold that the liability to pay interest on the amount of compensation determined under Section 23(1) continues to subsist until it is paid to the owner or interested person or deposited into court under Section 34 read with Section 31. Equally, the liability to pay interest on the excess amount of compensation determined by the Civil Court under Section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under Section 11 subsists until it is deposited into court. Proprio vigore in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till date of payment or deposit in terms of Section 34 or deposit into court in terms of Section 28, as the case may be".

19. In para 16 of the report, the Hon'ble Apex Court has held that the "ratio in **Meghraj and others** v. **Bayabai and others**(supra) is equally inapplicable to the ratio of

debt under the Land Acquisition Act, 1894. It is seen that by operation of Section 53 of the Land Acquisition Act, 1894, Order 21 Rule 1 being inconsistent with the express provisions contained in Sections 34 and 28 stands excluded. The ratio therein, therefore, is applicable only to a debtor and creditor in an ordinary civil suit governed by the provisions of C.P.C. Order 21 Rule 1 being inconsistent with the express provisions contained in Sections 34 and 28 of the Land Acquisition Act, 1894 cannot stand extended to the cases covered by the Act. It is unfortunate that these provisions were not brought to the attention of the Court when it decided **Mathunni Mathai** v. **Hindustan Organic Chemicals Ltd and ors**(supra) which makes all differences. With due respect to our learned brethren who decided the case, we are, therefore, construed to observe that **Mathunni Mathai** v. **Hindustan Organic Chemicals Ltd.** cannot be taken to have laid down the correct law".

20. In view of the clear pronouncement by the Hon'ble Apex Court, the ratio in **Meghraj and others** v. **Bayabai and others** and in **Mathunni Mathai** v. **Hindustan Organic Chemicals Ltd.** is inapplicable to the facts of the present case. The Decree Holders would be entitled to the interest as is stipulated under the Land Acquisition Act, 1894 on the enhanced compensation which was awarded by the Reference Court till the decretal amount is deposited in

the High Court. After deposit of the decretal amount in the High Court, the Decree Holders are not entitled to claim interest as per the Land Acquisition Act, 1894 till the enhanced compensation is actually received by them. In the present case, stay of the execution of the award was granted by this Court on a condition that the Applicants deposit the entire decretal amount. This Order was passed in the presence of the Decree Holders who were represented before the Court by a Counsel. No attempt whatsoever was made for withdrawal of the amount so deposited by the Applicants.

21. Mr. M. S. Usgaonkar, the learned Senior Counsel appearing for the Applicants has urged before me that this amount though, deposited in the Court, was not available to the Decree Holders as the withdrawal would be subject to the Decree Holders furnishing security. Even if stay had not been obtained and the Judgment Debtor had deposited the amount in the Reference Court, the Decree Holders in order to withdraw the amount would also be required to furnish security to the satisfaction of the Court. The Decree Holders would at the most be entitled to claim interest as is awarded under the Land Acquisition Act, 1894 till the Judgment Debtor has actually deposited the amount in the High Court, in pursuance to the Order passed by the Division Bench. Once, the Judgment Debtor has deposited the amount, the rate of interest under the

Land Acquisition Act, 1894 would cease and the Decree Holders would be entitled to the interest that has accrued on the amount being deposited in a Nationalised Bank. In this case, the Decree Holders have withdrawn Rs.30,54,815-61 with interest. This was the amount to which according to the learned Judges of the Division Bench, the Decree Holders were entitled to.

22. Thus, according to me, the Order passed by the learned Trial Court, the part which is impugned in the present revision, is unsustainable only to the extent that the Decree Holders are entitled for interest on solatium and are entitled for interest under the Land Acquisition Act, 1894 till the amount is deposited by the Judgment Debtor in the High Court in pursuance to the Order of the High Court.

23. The Civil Revision Applications are, therefore, accordingly allowed only to the extent indicated above. There shall, however, be no order as to costs.

P. V. HARDAS, J.